

REMARKS

Claims 1-11, 13-24 and 31-34 remain in this application. Claims 1, 7, 13 and 19 have been amended. Claims 31-34 have been cancelled without prejudice. No new claims have been added. The Applicants respectfully request reconsideration of this application in view of the above amendments and the following remarks.

Declaration

The Applicants submit a copy of the declaration, dated February 12, 2002, per the Examiner's request.

35 U.S.C. § 103 Rejection - McCrory et al. in view of Sewell et al. in view of Turek, et al.

The Examiner has rejected claims 1-11 and 13-24 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,697,962 issued to McCrory et al., (hereinafter referred to as "McCrory") in view of U.S. Application No. 2002/0165952 issued to Sewell et al (hereinafter "Sewell") in view of U.S. Patent No. 6,460,070 issued to Turek, et al (hereinafter "Turek"). The Applicants respectfully submit that the present claims are allowable over any combination of McCrory, Sewell and Turek.

Claim 1 recites a method comprising, *"launching a diagnostic agent process natively included in firmware of a host processing system upon boot-up of the host processing system."* McCrory, Sewell and Turek do not teach or suggest this limitation.

As understood by the Applicants, Turek relates to *a method for diagnosing a fault in a distributed system* (Abstract).

More specifically, the portion of Turek cited by the Examiner discloses that a software agent can be executed in firmware (col. 10, lines 29-41). The software agent is deployed onto a network and the agent migrates through the network. The agent

continues through the network until it finds a fault on a node within the network. The agent then attempts to correct the fault on the node (col. 7, line 58 - col. 8, line 16). However, the software agent in Turek does not reside in the node prior to a fault occurring. Accordingly, the software agent is only loaded into firmware of the node after a fault occurs. In contrast, claim 1 recites that the diagnostic agent process is natively included in firmware. For at least this reason, Turek does not teach or suggest *"launching a diagnostic agent process natively included in firmware of a host processing system upon boot-up of the host processing system."*

In addition, in order to establish a *prima facie* case of obviousness, three basic criteria must be met. First, *there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings.* Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure. In *re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness. The Examiner states in the Office Action mailed January 26, 2006 that "it would have been obvious . . . to combine the teachings of McCrory, Sewell and Turek because Turek's teaching . . . would increase the efficiency of McCrory's and Sewell's system." (page 4, point 13). Applicants respectfully submit that nowhere do McCrory, Sewell or Turek make a suggestion that combining the references would increase efficiency.

Accordingly, for at least these reasons, claim 1 is believed to be allowable. Claims 2-6 depend from claim 1 and are believed to be allowable thereof, as well as for the recitations independently set forth therein.

Claims 7, 13 and 19 include limitations similar to those of claim 1. Therefore the applicants submit that claims 7, 13 and 19 are also allowable over any combination of McCrory, Sewell and Turek. Claims 8-11 depend from claim 7, claims 14-18 depend

from claim 13, and claims 20-24 depend from claim 19, thus claims 8-11, 14-18 and 20-24 believed to be allowable thereof, as well as for the recitations independently set forth therein.

35 U.S.C. § 103 Rejection - McCrory et al. and Sewell et al. in view of Cidon et al.

The Examiner has rejected claim 31 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,697,962 issued to McCrory et al., (hereinafter referred to as "McCrory") and U.S. Application No. 2002/0165952 issued to Sewell et al (hereinafter "Sewell") in view of U.S. Application No. 2002/0133575 issued to Cidon et al (hereinafter "Cidon"). The Applicants respectfully submit that the present claims are allowable over any combination of McCrory, Sewell and Cidon.

Claim 31 has been cancelled, and therefore the rejection is believed to be moot.

Conclusion

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance. Applicants respectfully request that the rejections be withdrawn and the claims be allowed at the earliest possible date.

Request For Telephone Interview

The Examiner is invited to call Brent E. Vecchia at (303) 740-1980 if there remains any issue with allowance of the case.

Request For An Extension Of Time

The Applicants respectfully petition for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17 for such an extension.

Charge Our Deposit Account

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

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